

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Service Quality, Customer Satisfaction,	)	WC Docket No.
Infrastructure and Operating Data	)	08-190
Gathering)	
)	
Petition of AT&T Inc. for Forbearance	)	WC Docket No.
Under 47 U.S.C. § 160(c) From Enforcement	)	07-139
of Certain of the Commission's)	
ARMIS Reporting Requirements)	
)	
Petition of Qwest Corporation for)	
Forbearance from Enforcement of the)	
Commission's ARMIS and 492A Reporting)	
Requirements Pursuant to 47 U.S.C.)	
§ 160(c))	
)	
Petition of the Embarras Local Operating	)	WC Docket No.
Companies for Forbearance Under 47 U.S.C.	)	07-204
§ 160(c) From Enforcement of Certain of)	
ARMIS Reporting Requirements)	
)	
Petition of Frontier and Citizens ILECs)	
for Forbearance Under 47 U.S.C. § 160(c))	
From Enforcement of Certain of the)	
Commission's ARMIS Reporting Requirements)	
)	
Petition of Verizon for Forbearance Under	)	WC Docket No.
47 U.S.C. § 160(c) From Enforcement of	)	07-273
Certain of the Commission's)	
Recordkeeping and Reporting Requirements)	
)	
Petition of AT&T Inc. For Forbearance	)	WC Docket No.
Under 47 U.S.C. § 160 From Enforcement of	)	07-21
Certain of the Commission's Cost)	
Assignment Rules)	

TO: The Commission

COMMENTS OF THE RURAL NEBRASKA LOCAL EXCHANGE CARRIERS

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SUMMARY

Great Plains Communications, Inc., Hemingford Cooperative Telephone Company, Keystone-Arthur Telephone Company, K&M Telephone Company, Inc., Nebraska Central Telephone Company and Northeast Nebraska Telephone Company (collectively, the Rural Nebraska LECs), by their attorney, hereby submit these comments in response to the Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 08-203, released September 6, 2008 (NPRM), in the captioned proceedings.

The Commission proposes to extend ARMIS-type reports to all carriers, including small incumbent local exchange carriers (ILECs) such as the Rural Nebraska LECs. The NPRM does not give any reason for collecting such data. By proposing to impose a reporting burden on carriers without identifying a benefit for collecting the data, the NPRM violates the Paperwork Reduction Act and flies in the face of a 2001 warning from the Office of Management and Budget (OMB) on the same topic. The NPRM also does not comply with the Regulatory Flexibility Act, the Administrative Procedure Act and the Small Business Paperwork Relief Act of 2002. These issues are addressed in these comments and two separate comments filed today by the Rural Nebraska LECs.

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Great Plains Communications, Inc., Hemingford Cooperative

Telephone Company, Keystone-Arthur Telephone Company, K&M Telephone Company, Inc., Nebraska Central Telephone Company and Northeast Nebraska Telephone Company (collectively, the Rural Nebraska LECs), by their attorney, hereby submit these comments in response the Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 08-203, released September 6, 2008 (NPRM), in the captioned proceedings.¹ The Commission proposes to extend ARMIS-type reports to all carriers, including small incumbent local exchange carriers (ILECs) such as the Rural Nebraska LECs. The NPRM does not give any reason for collecting such data. By proposing to impose a reporting burden on carriers without identifying a benefit for collecting the data, the NPRM violates the Paperwork Reduction Act and flies in the face of a 2001 warning from the Office of Management and Budget (OMB) on the same topic. The NPRM also does not comply with the Regulatory Flexibility Act, the Administrative Procedure Act and the Small Business Paperwork Relief Act of 2002. These issues are addressed in these comments and two separate comments filed

¹ Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WC Dockets No. 08-190, 07-139, 07-204, 07-273, 07-21, FCC 08-203 (rel. Sept. 6, 2008) [hereinafter NPRM].

today by the Rural Nebraska LECs.²

BACKGROUND

The Rural Nebraska LECs are small ILECs serving rural areas of Nebraska. In addition to providing local exchange service, the Rural Nebraska LECs and their affiliates provide broadband service and long distance service.

Several of them serve fewer than 1000 lines. They all have fewer than 1500 employees (the size threshold for small businesses under the Regulatory Flexibility Act).³ Some of the Rural Nebraska LECs have fewer than 25 employees (the size threshold for small businesses under the Small Business Paperwork Relief Act of 2002).⁴ Given their small size and correspondingly small staff, they are especially impacted by any increased regulatory reporting requirements.

I. THE COMMISSION GIVES NO JUSTIFICATION FOR THE PROPOSED REPORTING REQUIREMENTS

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Comments of the Rural Nebraska Local Exchange Carriers on the Initial Regulatory Flexibility Analysis, WC Dockets No. 08-190, 07-139, 07-204, 07-273, 07-21, FCC 08-203 (filed Nov. 14, 2008); Comments of the Rural Nebraska Local Exchange Carriers on the Information Collections, WC Dockets No. 08-190, 07-139, 07-204, 07-273, 07-21, FCC 08-203 (filed Nov. 14, 2008).

³ NPRM app. C para. 5.

⁴ NPRM para. 44.

The gist of the NPRM appears to be that the Commission is looking for a use for its ARMIS reports. But that's putting the cart before the horse.

Before adopting any reporting requirements, the Commission should engage in a five-step process.

- Step 1- Determine why data should be collected
- Step 2- Determine what data should be collected
- Step 3- Determine who will provide the data
- Step 4- Determine how the data will be provided
- Step 5- Determine how to minimize the burden, especially on small companies

The Commission has skipped Step 1, and gone straight to Steps 2 and 3.

In the NPRM, the Commission posits that it could use data to aid the Commission's public safety and broadband policymaking, and could make the data available to consumers to help them make informed choices.⁵ The Commission does not explain why it needs more data for public safety and broadband policymaking, and why the data it already has is not sufficient. Similarly, the Commission does not explain why consumers need data that is not already available elsewhere and why the data should be provided at the federal level. The Commission has not pointed to any complaints at the state or federal level that would justify reporting burdens on small ILECs.

⁵ Id. paras. 34-35.

It appears that the main reason why the Commission released the NPRM is that it was required to respond to ARMIS forbearance requests filed by large ILECs and thought there may be a way to continue collecting ARMIS-type data. Surely, a decision to forbear from ARMIS reports for large ILECs is no basis for extending ARMIS reports to all carriers.

II. THE PROPOSED REPORTING REQUIREMENTS WOULD BE BURDENSOME

The ARMIS reports at issue are massive in scope.⁶ Even for the ILECs that likely already have ARMIS reporting systems in place, the Commission estimates the staff hours involved in producing the ARMIS Reports 43-05, 43-06, 43-07 and 43-08 (i.e., the ARMIS Reports at issue in this NPRM) to be about 1500 hours per year per company.⁷

For small ILECs to begin to generate ARMIS-type data, they may need to upgrade switch software, invest in new back office systems, or perhaps hire new staff to manually generate the data

⁶ They are described online at <http://www.fcc.gov/wcb/armis/descriptions.html>.

⁷ Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, 73 Fed. Reg. 43,933 (FCC July 29, 2008) (319 hours for each of ARMIS Reports 43-05 and 43-07); Public Information Collection(s) Approved by Office of Management and Budget, 71 Fed. Reg. 29,961 (FCC May 16, 2006) (720 hours for ARMIS Report 43-06); Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, 72 Fed. Reg. 5715 (FCC Feb. 7, 2007) (139 hours for ARMIS Report 43-08).

for the proposed reports. To generate customer satisfaction data, the small ILECs would need to start surveying customers about whatever issues are determined by the Commission. The cost of modifying internal procedures, upgrading or replacing systems, surveying customers, and hiring staff could range from tens of thousands of dollars to hundreds of thousands of dollars, depending on the size of the ILEC and the regulations that the Commission would adopt. These small ILECs would need to divert resources away from making system improvements that impact end users - just to provide data to the Commission for an undefined purpose.

III. THE OMB NIXED A MORE LIMITED VERSION OF THIS DATA COLLECTION IN 2001

This isn't the first time that the Commission tried to expand ARMIS-type reporting to more carriers without providing adequate justification. Eight years ago, in the Biennial Review Service Quality Reporting Requirements Notice, the Commission proposed to extend service quality reporting (ARMIS Report 43-05) to all ILECs.⁸ That Notice did not provide evidence of any complaints about the quality of service provided by small ILECs.

⁸ 2000 Biennial Regulatory Review - Telecommunications Service Quality Reporting Requirements, Notice of Proposed Rulemaking, CC Docket. No. 00-229, 15 FCC Rcd. 22,113, 22,122 (2000).

Many small ILECs, including some of the Rural Nebraska LECs, filed comments in that proceeding, and showed that the proposed reporting requirements were unjustified and would be unduly burdensome.⁹ In response to those comments, the OMB stated:

The comments we received show a considerable cost for the reporting requirement, but do not include discussion of benefits. Absent a significant benefit being shown, we do not approve the extension in this proposal pursuant to the Paperwork Reduction Act.¹⁰

The same is true here. The Commission has proposed to extend the service quality reporting requirements to all carriers, and has not shown any benefit to imposing the proposed reporting requirements on any carriers, let alone small ILECs such as the Rural Nebraska LECs. And this time, instead of extending just service quality reporting to all LECs, the Commission proposes to extend almost all ARMIS-type reporting to all carriers. Under the Paperwork Reduction Act, the Commission cannot impose such unjustified paperwork burdens.

The Rural Nebraska LECs respectfully request the Commission to heed the OMB's prior warning about its service quality

⁹ E.g., Rural Local Exchange Carriers Comments, CC Docket No. 00-229 (dated Jan. 12, 2001); Bluestem Telephone Company, Chautauqua & Erie Telephone Corporation, GT Inc dba GT Com Inc, Sunflower Telephone Company, Inc. and Taconic Telephone Corporation Comments, CC Docket No. 00-229 (dated Jan. 12, 2001); Vermont ITCs Comments on Proposed Information Collections, CC Docket No. 00-229 (dated Jan. 3, 2001).

¹⁰ Letter from Edward Springer, OMB, to Judy Boley, FCC, CC Docket No. 00-229 (Jan. 29, 2001).

reporting proposals and terminate the NPRM. Alternatively, the Commission could exempt small ILECs from the proposed reporting requirements, consistent with the Regulatory Flexibility Act, the Paperwork Reduction Act and the Small Business Paperwork Relief Act (as discussed in other comments filed by the Rural Nebraska LECs on this date).

IV. THIS PROCEEDING SHOULD HAVE BEEN A NOTICE OF INQUIRY

A third option would be to use the NPRM as a notice of inquiry to determine, in the first instance, whether there is a need to obtain data from any carriers.

Indeed, in this situation, the Commission should have issued a notice of inquiry instead of the NPRM. A notice of proposed rulemaking should be used only after the Commission already has determined the need for adopting regulations and has defined specific proposals to address those needs. Here, the Commission has given no well-reasoned basis or purpose for collecting more data from more carriers. Yet such details about the basis and purpose must be provided for the rulemaking to be compliant with the Administrative Procedure Act. Interested parties cannot comment meaningfully on the proposed rules unless the notice provides "an accurate picture of the reasoning that has led the

agency to the proposed rule."¹¹ Earlier this year, the courts reminded the Commission of the need to make public its reasons for proposing regulations.¹²

If the Commission had issued a notice of inquiry, it could have asked the industry, state commissions and consumer groups what uses there may be for collecting data. Then, after receiving comment from interested parties and determining if there indeed is a reason to collect data at the federal level, the Commission could adopt a notice of proposed rulemaking that determines what data is collected, who provides the data, and how it will be provided.

To remedy this situation, the Commission could use the existing NPRM to determine what the basis and purpose will be for collecting data, if any. Then, if the Commission determines that it does indeed need more data, the Commission could issue a further notice of proposed rulemaking to determine the what, who and how of the data collection.

CONCLUSION

As shown above, the Commission has not explained why it

¹¹ Connecticut Light & Power Co. v. Nuclear Regulatory Comm'n, 673 F.2d 525, 530 (D.C. Cir. 1982).

¹² American Radio Relay League, Inc. v. FCC, 524 F.2d 227, 236-40 (D.C. Cir. 2008).

Respectfully submitted,
RURAL NEBRASKA LECs

Their Attorney

November 14, 2008 Comments
WC Dockets No. 08-190 et al.

CERTIFICATE OF SERVICE

I, Susan J. Bahr, Law Offices of Susan Bahr, PC, certify that on this 14th day of November, 2008, I have sent a copy of the foregoing to the following:

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